

Nondiscrimination Installation Reports, and Nondiscrimination ONA Parity Reports, all of which are available for review by AT&T, MCI and other competitors. See Gilbert/Panzar Aff., ¶ 33. In addition, BOCs will file the separate affiliate audit reports prescribed by Section 272(d)(2) of the 1996 Act. Taken together, these safeguards ensure that any attempt by Ameritech to engage in cross-subsidization or systematic discrimination against its long distance competitors would be "highly conspicuous" and therefore destined to fail.^{105/} As the Commission has concluded, the BOCs' disclosure requirements "will facilitate the detection of anticompetitive behavior" by their "vigilant" competitors.^{106/}

Moreover, the 1996 Act ensures that such conduct, once detected, will be promptly sanctioned. It grants the Commission "specific authority to enforce the requirements of section 272 and the other conditions for in-region, interLATA entry," and this authority "augments the Commission's existing enforcement authority."^{107/} Section 271(d)(6)(A) of the Act gives the Commission the power to order a BOC to "correct [any] deficiency" in its conduct, to impose civil penalties, and to "suspend or revoke" the BOC's approval to provide long distance service — the death penalty for a long distance provider. And the Commission must act upon any complaints about a BOC's behavior within 90 days, ensuring that a BOC cannot reap even short-term rewards for any anticompetitive behavior. Section 271(d)(6)(B). Moreover, the

^{105/} See United States v. Western Elec. Co., 12 F.3d 225, 235 (D.C. Cir. 1993).

^{106/} Non-Accounting Safeguards First Report and Order, ¶¶ 323, 328.

^{107/} BOC Non-Dominance Order, ¶ 117. The Commission noted that, even before the manifold protections of the 1996 Act became effective, "our existing safeguards have worked reasonably well and generally have been effective, in conjunction with our regular audits, in deterring the improper allocation of costs and unlawful discrimination."

BOCs will bear the burden of production in any enforcement proceeding, which "will facilitate the detection of anticompetitive behavior."^{108/}

In sum, if Ameritech were to engage in systematic misconduct so pervasive as to impede competition in long distance services, it would be obvious to its competitors and to regulatory authorities. As the Court of Appeals noted in United States v. Western Elec. Co., 993 F.2d 1572, 1580 (D.C. Cir. 1993), the "giants operating throughout the country . . . will notice any discrepancies in treatment by the various BOCs and will have the capacity and incentive to bring anticompetitive conduct to the attention of regulatory agencies." If, on the other hand, Ameritech's conduct were so subtle as to evade detection by competitors that have every incentive to complain about any perceived deviation from statutory, regulatory or contractual requirements, that conduct could have no impact on competition in the long distance business.^{109/}

C. The Actions Taken by Ameritech to Open the Local Exchange to Competition are Irreversible.

As demonstrated above, there are effective statutory, regulatory, technological and market safeguards against any attempt by Ameritech to use its position in local exchange services to

^{108/} Non-Accounting Safeguards First Report and Order, ¶ 347.

^{109/} The remoteness of any risk of discriminatory conduct by a BOC competing in long distance is confirmed by the historical record. The evidence from the integration of local and long distance services in other countries, and the success of Ameritech's competitors where Ameritech itself competes in the provision of cellular, intraLATA toll, WATS, 800 and information services, counter any speculation about the inevitability of discrimination. Gilbert/Panzar Aff., ¶¶ 50-59.

impede long distance competition. At the same time, these safeguards ensure that Ameritech cannot possibly reverse the course of local exchange service competition in Michigan.^{110/}

Of equal significance is the fact that Ameritech has fully implemented the competitive checklist, including its nondiscrimination requirements, by entering into and performing under numerous negotiated and arbitrated interconnection agreements. Each of these approved agreements incorporates the statutory mandate that access and interconnection be provided on a nondiscriminatory basis. The agreements contain provisions that guarantee nondiscrimination in the provision of network interconnection, unbundled network elements, resold services, local transport and termination, collocation and access to poles, ducts, conduits and rights-of-way; and each of these also must be provided on the same terms and conditions on which Ameritech provides the item to itself and its affiliates. Moreover, pursuant to the most favored nation clauses in these agreements, competing providers have available to them all elements, products and services made available under any agreement at the rates and on the terms and conditions specified in that agreement. See Edwards Aff., ¶¶ 14-17. In short, these agreements will further ensure that the local exchange in Michigan is, and will remain, open to competition.

Of particular importance, the extensive collocation of the equipment of Ameritech's competitors in Ameritech's wire centers would render any attempt to turn back the clock on facilities-based competition futile. See Gilbert/Panzar Aff., ¶ 84. These collocated competitors effectively can reach every customer whose loops terminate in those wire centers, which will give them access to over 42 percent of Ameritech Michigan's business access lines and 29 percent of its residential access lines by July of this year. See Harris/Teece Aff., pp. 33-35.

^{110/} See generally the Harris/Teece Affidavit, Parts II-IV, which contains an extensive analysis of the state of competition and the absence of entry barriers in the local exchange market segment in Michigan, along with substantial supporting documentation.

Such extensive collocation effectively precludes any attempt by Ameritech Michigan to keep other carriers from competing for its customers.

To ensure Ameritech's continued compliance, each interconnection agreement embodies concrete, detailed performance standards and benchmarks, with significant penalties imposed for noncompliance. See Mickens Aff., ¶¶ 17-29. For example, Ameritech's agreement with AT&T (Volume 1) provides that "[i]nterconnection shall be equal in quality" to that provided by Ameritech to itself, its affiliates, or any other carrier, defining "equal in quality" to mean "the same technical criteria and service standards" that Ameritech uses within its own network. AT&T Agreement, § 3.6. Satisfaction of this "equal in quality" standard is measurably objective: Ameritech must maintain separate interconnection records of the performance it provides to itself, to its affiliates and subsidiaries, to AT&T and to other carriers. Id., § 3.8.2. See also Mickens Aff., ¶¶ 17-46 (discussing similar benchmark, recordkeeping and reporting requirements with regard to Ameritech's provision of unbundled network elements, resale, operations support systems, and maintenance and repair).

Of course, even without the extensive reporting requirements imposed by the agreements, AT&T and Ameritech's other competitors would monitor Ameritech's performance with microscopic rigor. For example, their own operations support systems provide them with the necessary statistical breakdown of Ameritech's performance, which they can easily compare with the public regulatory reports that Ameritech must file and thereby assess the relative parity of Ameritech's service performance. The reporting requirements simply make monitoring Ameritech easier and any noncompliance more obvious. Thus, any discrimination by Ameritech would be exposed to its competitors. Under these circumstances, Ameritech would have no

incentive to engage in any discriminatory misconduct — much less a pattern of conduct on the scale necessary to impede competition in local exchange services.

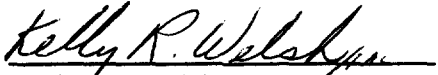
Moreover, there will be extensive oversight by the Commission and the MPSC with regard to Ameritech's provision of local exchange services. The Commission's responsibility to ensure Ameritech's satisfaction of the requirements for long distance operations does not end with its approval of the 271 application. To the contrary, the Commission may sanction Ameritech "at any time." Section 271(d)(6)(A). And the Commission's enforcement powers are not limited to the long distance sector; if Ameritech fails to meet "any of the conditions" required for approval, which include nondiscrimination against competitors in the provision of local exchange services, the Commission is empowered to act. In addition, the MPSC has continuing authority to enforce compliance with the nondiscrimination provisions and other requirements imposed on Ameritech by the Act, and any complainant would be able to seek sanctions from that State body, as well as from the Commission. See Wilk/Fetter Aff., ¶¶ 45-49.

Finally, Ameritech can compete in this new competitive environment only by maintaining a reputation among its customers for quality and dependability. The competing local exchange carriers will provide consumers with alternatives to Ameritech for years to come. Ameritech's reputation therefore would be severely damaged by any attempt to manipulate the quality of its services. In short, any attempt by Ameritech to avoid its statutory, regulatory legal or contractual obligations would be futile and (from both a business and legal perspective) self-defeating.

VII. CONCLUSION

There is only one effective strategy for achieving Congress' goal of invigorating competition in long distance: unleash qualifying Bell companies, such as Ameritech, that have satisfied the requirements of the 1996 Act to compete in long distance. Ameritech has entered into agreements that meet the requirements of Section 271(c)(1)(A); has fully implemented the competitive checklist in Section 271(c)(2)(B); complies with the separate affiliate and other requirements in Section 272; and satisfies the "public interest" requirement in Section 271(d)(3)(C). Because Ameritech has done all that Congress required it to do, and because its entry will advance the procompetitive objectives of the 1996 Act, the Commission should grant Ameritech's Application.

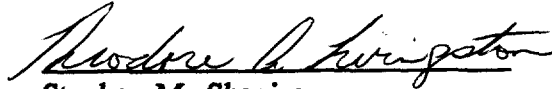
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